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SUBJECT: DEPUTY SECRETARY OF THE TREASURY KIMMITT'S JANUARY
22, 2007 MEETING WITH BELGIAN FM DE GUCHT

Classified By: Ambassador Tom C. Korologos, Reasons 1.4 (B) and (D)

¶1. (C) Summary: Belgium will do all possible to insure the vigorous implementation of UNSCR 1737, Belgian FM De Gucht assured Treasury Deputy Secretary Kimmitt during a one hour meeting in Brussels on January 23, 2007. De Gucht indicated that he personally was engaged on the issue, and that all levels of Belgium's complicated and cumbersome governmental machinery were working together closely. On SWIFT, De Gucht expressed strong support for a U.S.-Europe compromise that recognized the equities of all concerned. Deputy Secretary Kimmitt thanked De Gucht for Belgium's stance on UNSCR 1737, and urged the Belgians to keep close tabs on Iran's state-owned banks. The Deputy Secretary also agreed on the urgent need for an agreement on SWIFT, adding that he would be meeting later that day to talk about SWIFT with EU officials. Septel covers the Deputy Secretary's meeting, also on January 23, with Belgian Finance Minister Reynders. End summary.

Implementation of UNSCR 1737

¶2. (C) FM De Gucht opened the meeting by indicating repeatedly that the Belgian government remained committed to going beyond the requirements of UNSCR 1737. In that connection, he cited Belgium (and the EU's) recent decision to impose a visa ban, and to enlarge the list of people subject to an asset freeze. The Minister said he was personally engaged in the effort to galvanize Belgium's government machinery on the Iranian sanctions issue. Although Belgium's regions had the authority to issue export licenses for many dual-use items, they generally defer to the policy advice provided them by the Foreign Ministry. As an indication of the seriousness with which he took the issue, De Gucht said it was his policy to make sure that he personally signed the licenses of any nuclear-related item. None of the regional leaders dared to put their name personally on a license application.

¶3. (C) The Deputy Secretary expressed appreciation for the leadership of Belgium and Europe at the regional (EU) and global (United Nations) levels on this issue. He added that effective implementation of the UN decisions was critically important. He noted that the European Council's action on 22 January was a good start in the right direction, focusing in particular on the Council's agreement to ban transactions with and freeze the assets of individuals and entities covered by the criteria in UNSCR 1737. He asked the Foreign Minister for his views on how the EU process would work going forward.

¶4. (C) In response, De Gucht asserted that EU Member States have two parallel responsibilities regarding any actions

demanding by the UN Security Council. First, Member States have a direct obligation under international law to implement Security Council resolutions. Second, Member States have an obligation to implement EU-passed sanctions. Kimmitt observed that not all Member States take the same position, and that some assert they cannot implement Security Council resolutions without additional action from the EU. De Gucht said this was incorrect. He noted that Belgium is a "monist" state that automatically incorporates automatically into domestic law Security Council resolutions and other international law. He observed that other states are "dualist" and transpose Security Council resolutions into domestic law. While the form of implementation may differ, each United Nations member is bound by international law to implement Security Council resolutions; this includes EU Member States. In Belgium, the banking regulator immediately implements Security Council asset freezes as well as EU anti-money laundering directives. Moreover, bank directors are personally liable for failures to implement the law. (EMBASSY COMMENT: Article 60(2) of the Treaty of the European Union additionally empowers EU Member States to implement Security Council resolutions immediately without waiting for EU action).

15. (C) The Deputy Secretary welcomed De Gucht's detailed description of Belgian law and policy. He expressed the opinion that UNSCR 1737 should be a rallying point for states to act. He added that strong implementation by the EU would send an important signal to the global community generally and to Iran in particular. He noted that targeted sanctions are already having an impact in Iran, with the leadership increasingly under pressure from the top (the Supreme Leader) and the bottom (legitimate businesses) that are feeling the strain of targeted sanctions on illicit conduct.

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16. (C) Kimmitt noted that the U.S. Treasury Department played a key role in the U.S. effort to carry out both the 1737 sanctions regime and those imposed by other resolutions. The Deputy Secretary said the U.S. was particularly concerned about the actions taken in Europe and elsewhere by Iran's state-owned banks, several of which seemed to have an instrumental part in promoting Tehran's nuclear ambitions. Kimmitt emphasized that the financial sanctions agreed by the United Nations were targeted to avoid touching legitimate trade and legitimate business unrelated to terrorism or proliferation activities. Nonetheless, he also observed that it would be almost impossible for banks to "know their customer" given the complex web of state-ownership for banks and companies in Iran. He added that efforts to hide transactions have become extremely sophisticated in Iran. For example, in the case of ABN AMRO, the bank's Dubai branch became a primary financing node for Bank Melli and, through Bank Melli, supported a range of sanctioned activities. Although no one in the Amsterdam head office was aware of these activities, enforcement actions were taken against the bank in both the U.S. and Europe. Other European banks seem to be ahead of European governments and are voluntarily deciding that doing business with Iranian state-owned counterparties is not worth the risk, including the risk to their US-based business.

17. (C) De Gucht responded with a comment on the details of European banking law, a subject he said he had taught in his law course for two decades. He noted that the key issue within the EU would be who had the responsibility to exercise oversight regarding a bank branch. According to him, the home country regulator would be responsible for oversight of bank branch activities anywhere in the world. Therefore, any Belgian bank doing business with an Iranian counterpart would have to follow Belgian law, he claimed. As such, they would be bound to follow a strict sanctions regime. Kimmitt responded that other EU Member States were not as willing to act as Belgium. He noted that another EU Member State clearly had authority to act over a subsidiary of an Iranian

state-owned bank and refused to act, claiming it needed first a common position and a regulation from the EU. De Gucht said this was an incorrect reading of the legal obligations of Member States who are members of both the U.N. and the EU. Kimmitt agreed.

SWIFT

¶8. (C/NF) The Foreign Minister asked the Deputy Secretary about the status of the SWIFT negotiations. He noted that the Belgian government supported efforts to reach a Europe-wide consensus on how to deal with SWIFT "so it can continue working." He noted that "until now, no criminal investigation" had been undertaken on the matter and that the Prime Minister wanted an agreement between the United States and the Commission. While making clear that he personally had not been deeply involved on the issue, he noted that political leaders were responding to public fears about the "indiscriminate" use of any data collected during transactions through the SWIFT mechanism. He asked "what happens to the information after it has been transferred" and urged the USG to make a maximum effort for progress on the issue.

¶9. (C/NF) The Deputy Secretary expressed appreciation for the Belgian government's actions in this situation. He agreed that it would be important to balance the need to protect citizens from terrorism with the need to protect their privacy. He noted that the Terrorism Finance Tracking Program (TFTP) incorporated significant safeguards precisely to protect individual privacy. He noted that Treasury experts had met with Commission experts the previous week and that it seemed both sides seemed close to substantive conclusions, although it was unclear how that agreement would or should be memorialized. He noted that Treasury had accelerated its efforts to reach an agreement, recognizing the Prime Minister's concerns. He noted that Treasury was working cooperatively with the Commission, and indicated that since the summer six meetings had occurred between Treasury and the Commission. He would meet with Frattini the following day as well.

¶10. (C/NF) Kimmitt also challenged De Gucht's use of the word "indiscriminate," noting that a number of safeguards had been incorporated into the TFTP to ensure a narrow focus of data collection efforts and access to the data. In particular, specific objective factual information was

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required before the database is accessed. Second, an independent contractor reviews the request to ensure access is properly granted.

¶11. (C/NF) Regarding data retention, Kimmitt noted that hard drives can be difficult to erase and asked what the standard for data retention might be in Belgium. He also asked whether the length of the data retention period was a concern. The Foreign Minister replied that banks are required to hold data for five years and then destroy it. Kimmitt indicated that the period in the United States was different.

BELGIAN TAX ISSUE

¶12. (C) The Foreign Minister at the end raised a question regarding the taxation of Belgian embassy employees in the United States, noting that the first bilateral discussion of the issue was scheduled for later in the week in Brussels. Kimmitt responded that the issue had been raised to him in Washington by the new Belgian Ambassador as well. He observed his understanding that this was a technical tax administration issue, perhaps limited to U.S. green card

holders. He noted that holding a green card is a step towards U.S. citizenship and so individuals that hold a green card normally are taxed on U.S. earned income. The technical question for consideration was how to address this issue under a double taxation treaty. The Foreign Minister noted that the issue did not involve diplomatic personnel but locally engaged staff. The Deputy Secretary promised to look into the issue.

¶13. (U) Ambassador Kimmitt cleared this cable. Korologos

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